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COUNSEL

# TRANSCRIPT OF PROCEEDINGS

2007 OCT 19 P 1:48

Re: [REDACTED]  
James H. Pedersen  
Pedersen 2006

Pages: 1 through 61  
Place: Washington, D.C.  
Date: October 9, 2007

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COMMISSION  
OFFICE OF GENERAL  
COUNSEL

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BEFORE THE

FEDERAL ELECTION COMMISSION

1:48

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4 In Re: MUR 5785 )

5 James E. Pederson )

6 Pederson 2006 )

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Probable Cause Hearing

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United States

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Federal Election Commission

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999 E Street, Northwest

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Washington, D.C.

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Tuesday, October 9, 2007

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18 MEMBERS OF THE PANEL:

19

ROBERT D. LENHARD, CHAIRMAN

20

DAVID M. MASON, VICE CHAIRMAN

21

ELLEN L. WEINTRAUB, COMMISSIONER

22

HANS A. von SPAKOVSKY, COMMISSIONER

23

STEVEN T. WALTHER, COMMISSIONER

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## P R O C E E D I N G S

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CHAIRMAN LENHARD: Good morning, everyone.

I would like to call to order the Federal Election Commission. We are having a pre-probable cause hearing this morning. It is October 9th, roughly 10:00 a.m.

The matter before us involves MUR 2785, the respondents being James E. Pederson of Pederson 2006 and Carter Olson is the treasurer thereof. We have before us Mr. Marc Elias and Mr. Ezra Reese of the law firm of Perkins Coie on behalf of respondents.

This case arose when Mr. Pederson was a candidate for the Senate from Arizona 2006, failed to timely file two Millionaires' Amendment notices. The first notice disclosed roughly \$2 million in expenditure from Mr. Pederson's personal funds, it was filed six days late. The second notice disclosed \$275,000 in expenditures and was filed three days late.

On March 6th, 2007, this Commission found

1 reason to believe that respondents violated the act  
2 for failing to timely file the Millionaires'  
3 Amendment notices and we entered into pre-probable  
4 cause issued to respondents.

5           This process has been unsuccessful to date  
6 and a response was a request for this hearing to  
7 set forth the position. My understanding is  
8 Mr. Elias will be speaking on behalf of respondents  
9 and you have 20 minutes which you may divide  
10 between opening comments and questions and answers  
11 as you choose. My understanding from your staff is  
12 that you would prefer to have 13 minutes of time  
13 devoted to presentation, seven for questions and  
14 answers, and my belief is that the staff will  
15 successfully operate a color-coded timing system  
16 there of lights for you, and the -- and so you  
17 should receive a little green light when you begin,  
18 yellow light as time comes close to close and a red  
19 light when your time s expires and you can manage  
20 that yourself.

21           After your opening comments, the  
22 commissioners will have questions. We don't have a

1 particular order or sequence. As people seek  
2 recognition, obviously we will recognize them and  
3 you can have a dialogue at that point.

4 So, without further framing or ado,  
5 Mr. Elias, the mic' is yours.

6 MR. ELIAS: I appreciate it, Mr. Chairman,  
7 members of the Commission, General Counsel, staff,  
8 I appreciate the opportunity to appear today on  
9 behalf of the respondents.

10 I think, Mr. Chairman, you laid out the  
11 factual predicate of this case fairly well with one  
12 additional fact regarding the election that I think  
13 is significant here, and then a little more  
14 background I would want to provide on the  
15 respondent's position.

16 You are correct that Jim Pederson was a  
17 first-time candidate, running in the State of  
18 Arizona and was running unopposed in the primary,  
19 and I think that is a fact that this Commission  
20 cannot lose sight of, because at the time that he  
21 relied upon his outside and experienced compliance  
22 director, who submitted an affidavit in this case,

1 taking responsibility for the late filings, there  
2 was no person capable of receiving relief under the  
3 act. No one. Not no one real, not no one  
4 credible, not no one serious, not no one in the  
5 mainstream, no one.

6 There was not a single person anywhere,  
7 not a single committee anywhere capable of  
8 receiving relief under the Millionaires' Amendment.

9 So, what you have here is a case that is  
10 fairly straightforward. You have a violation of  
11 434(a) that resulted in no prejudice to anyone.


12 The Administrative Fines regulation on its  
13 face applies to 434(a) violations. Now, I  
14 understand that there is an incongruity between  
15 Millionaires' Amendment violations for House  
16 candidates, which is not governed by 434(a), and  
17 Millionaires' Amendment provisions for Senate  
18 candidates, which are, but that is the way Congress  
19 wrote the statute, and I might add, it is the way  
20 in which Congress wrote the statute and this  
21 Commission implemented regulations for the  
22 Administrative Fines.

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1 Under the Administrative Fines guideline,  
2 this Commission presumptively would proceed under  
3 those guidelines for a 434(a) violation. It's  
4 pretty clear. It's in this book you guys put out.  
5 And in fact, if you didn't proceed under those  
6 guidelines, you're supposed to make a determination  
7 that you didn't -- that you're not going to proceed  
8 that way, that you're not going to proceed under  
9 the Administrative Fines regulations, but instead  
10 you're going to proceed otherwise.

11 I'm unaware that the Commission has done  
12 so. I assume the Commission wouldn't do so,  
13 because there wouldn't be any reason to do so.  
14 Because, in fact, this does not present an  
15 extraordinary case, this presents actually a  
16 relatively routine case of reports that were filed  
17 six days and three days late, for which no one  
18 suffered any prejudice. No one. No one suffered  
19 any prejudice.

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17           If, ultimately, the Commission believes  
18   that a case that involves no prejudice to anyone  
19   and a report filed six days late and a report filed  
20   three days late, [REDACTED] then this is  
21   just going to be one of those cases that we're  
22   going to let Article 3 decide, rather than us.

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And I guess part of my message to the

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Commission today is that if at the end of this

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hearing, this Commission continues to believe that,

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number one, the regulations that it promulgated

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regarding the Administrative Fines process, in

13

fact, do not apply, and do not require

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determination; and B, if they believe -- if the

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Commission believes that a proportionate and

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non-arbitrary and capricious and constitutional

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fine in this case would be

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then I would suggest the Commission

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dispatch the found probable cause quickly, let's

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let the 30 days of post-probable cause conciliation

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run, you might as well get litigation authority in

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one fell swoop, because I don't believe that a

1 court is going to take the position, and in fact I  
2 don't think this agency will be served well, in  
3 letting a court decide whether or not a report  
4 filed six days late and a report filed three days  
5 late, where there was no prejudice to any  
6 candidate, and where the Commission did not proceed  
7 under the regulation that clearly applies on its  
8 face to such violations.

9 I don't think that's a situation that the  
10 court is going to view favorably, but I may be  
11 wrong and it may be that the General Counsel's  
12 Office is right and the court will, and again,  
13 that's why litigants eventually wind up in court.

14 The other point that I made in our -- in  
15 my correspondence with the General Counsel's Office  
16 relates to precedent here, and my concern that  
17 there is none that would support a finding of this  
18 magnitude. [REDACTED]

19 [REDACTED] [REDACTED] [REDACTED]  
20 [REDACTED] [REDACTED] I sit here today to again point  
21 out to the Commission that there is no precedent  
22 that you are going to be able to find in such a

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1 case for a fine approaching anything of that  
2 magnitude.

3 I point out that a Republican Senate  
4 candidate, also a first-time candidate, running in  
5 the same election cycle, filed a report a day late,  
6 he had a candidate running against him, so his  
7 report mattered, and the Commission under  
8 prosecutorial discretion decided not to proceed  
9 with any fine. So, it decided to dismiss the case.

10 I note that another Republican Senatorial  
11 candidate filed one report three days late, another  
12 report 120 days late, another report 105 days late,  
13 yet another report 71 days late, had unreported  
14 in-kind contributions, unreported receipts,  
15 unreported disbursements, unreported interest,  
16 unreported capital gains, \$19,500.

17 So, I sit here today, frankly, bewildered  
18 as to what this case is about. Jim Pederson ran  
19 against no one in the democratic primary for  
20 Senate, [REDACTED]  
21 [REDACTED] and  
22 yet Senator Corker prevails under prosecutorial

1 discretion, and Mr. Ravenel receives a \$19,500  
2 deal.

3 I'm going to do something that I rarely  
4 do, which is yield back the remainder of my time,  
5 because that's to me really, this isn't that  
6 complicated. So, I would be happy to answer any  
7 questions the commissioners or the staff may have.

8 CHAIRMAN LENHARD: Okay, thank you very  
9 much. Commissioner von Spakovsky?

10 COMMISSIONER von SPAKOVSKY: Thank you,  
11 Mr. Elias. A couple of questions for you. Under  
12 what circumstances do you think or are you  
13 outlining that you think the Administrative Fines  
14 ought to apply to, you know, a Millionaires'  
15 candidate, and not apply to [REDACTED] I mean, my  
16 understanding of the fines in past cases of the  
17 Commission, and I'll admit I think the original reg  
18 was put in before I got here, it was that there  
19 needed to be a strong deterrent effect for someone  
20 with a great deal of money so that they don't delay  
21 notification to the other candidates, because  
22 obviously if they put in enough money the

1 candidates will be able to raise it.

2           So, are you saying that the Administrative  
3 Fines ought to apply in all these circumstances, or  
4 only in circumstances such as you've described,  
5 where, for example, there's not an opposing  
6 candidate?

7           MR. ELIAS: It's a fair question, and I  
8 would answer it in two ways: Number one, if the  
9 Commission does not want violations of 2 U.S.C.  
10 434(a) to go before the Administrative Fines, then  
11 they ought to not have a reg that says that  
12 violations of 2 U.S.C. 434(a) presumptively go  
13 under the Administrative Fines.

14           VICE CHAIRMAN MASON: Would you please  
15 explain where the presumption is?

16           MR. ELIAS: This is 11 CFR 111.31, it  
17 begins in (a), by saying that this subpart, which  
18 is the Administrative Fines subpart, rather than  
19 the other -- the other subparts, which are not in  
20 Administrative Fines, will apply when  
21 appropriate -- I'm sorry -- and when appropriate,  
22 determines that the fines matter should be subject

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1 to this subpart. If the Commission determines that  
2 the violations should not be subject to this  
3 subpart, then the violation will be subject to all  
4 the section of subpart (a) of this part.

5 I read that second clause that if the  
6 Commission determines that the violation should not  
7 be subject to this subpart, then the violation --  
8 then the -- then the normal process will apply to  
9 require exactly what it is he, which is a  
10 determination, and a determination within the FEC  
11 context as you know requires an affirmative vote of  
12 four commissioners. I'm unaware of such a vote  
13 having taken place in this case.

14 I think if you look at the history of the  
15 Administrative Fines regulation, when you look at  
16 the explanation of justification, and,  
17 Commissioner, I'm embarrassed to say this to you,  
18 because you, of course, were here for this, so you  
19 know better than I, the whole purpose of the  
20 Administrative Fines regulations was to create a  
21 presumption that 434(a) violations would in the  
22 ordinary course be treated like traffic tickets.

1 They would just go through this process. And, in  
2 fact, all of the concerns in that administrative  
3 rule-making were not that too many cases were going  
4 to wind up in the normal course, but that, in fact,  
5 that pushing most of those matters into the  
6 Administrative Fines context might deprive people  
7 like Mr. Pederson of due process.

8 So, it's, frankly, a perversion that I now  
9 stand here begging to be treated under the less due  
10 process standard of the Administrative Fines  
11 context when, in fact, that was entirely what the  
12 debate before the Commission was at the time and  
13 what the Commission struggled with.

14 So, Mr. Spakovsky, to answer your question  
15 more completely, my answer is twofold: Number one,  
16 if it wishes to bring a certain category of  
17 offenses outside of this regulation, then it ought  
18 to make those determinations. Now, what standard  
19 would I offer to the Commission in making that  
20 determination? Well, one of the things I would  
21 look to is the exact public policy that you point  
22 to, which is that it was intended to prevent

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1 candidates from delaying filing this paperwork, and  
2 notifying opponents, in an effort to deny them  
3 relief.

4 In this case, there was no opponent. So,  
5 whether he filed it three days later or at the  
6 moment he wrote the check, it was going to have the  
7 same effect, the same exact effect, on his  
8 opponents, because there weren't any opponents.

9 So, from a public policy standpoint, it  
10 strikes me the first category of cases that you  
11 would not determine out from the Administrative  
12 Fines would be those where you have a primary,  
13 without an opponent.

14 CHAIRMAN LENHARD: So, if I could just be  
15 clear and follow up on that. So, your reading of  
16 this regulation is that the Commission could  
17 conclude that categories of cases such as those  
18 involving the Millionaires' Amendment fell outside  
19 of the Administrative Fines programs, then we would  
20 not have to have a case-by-case determination and  
21 vote on every case that we wanted to and sent from  
22 the Administrative Fines program. Is that correct?

1 MR. ELIAS: I think it could do that by  
2 ruling, I'm not sure it could do that by fiat. I  
3 think you have a rule that requires a  
4 determination, and I'm not sure that the Commission  
5 can decide, having promulgated that regulation  
6 under APA standards, could now decide without  
7 re-opening that rule-making, to exempt an entire  
8 category of violations.

9 I mean, there are certain reports that are  
10 considered election sensitive, and I would point  
11 out to all of you as you know that Millionaires'  
12 Amendment reports filed under 434(a) are not  
13 considered those. I mean, you know, if the  
14 Commission wants to revisit whether it views them  
15 to be more sensitive and important, or whether they  
16 shouldn't be -- they shouldn't proceed under the  
17 Administrative Fines, that's something the  
18 Commission could certainly do. I would encourage  
19 while it's at it that it might move beyond the  
20 interim rule status of the Millionaires' Amendment  
21 generally.

22 So, I mean, this -- you know, this

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1 Commission has not been quick to take up questions  
2 involving regulatory ambiguity of the Millionaires'  
3 Amendment, and therefore, I think for better or  
4 worse, it gets stuck with the rules as they are,  
5 rather than the rules as they might wish them to  
6 be, until it finishes its rule-making.

7 CHAIRMAN LENHARD: Mr. Elias, we had  
8 initially scheduled the Millionaires' Amendment for  
9 this year, we have decided to push ahead of that  
10 with both the changes -- the implementation of the  
11 changes that Congress made as to planes and  
12 bundling and the implications of the Supreme  
13 Court's decision this year.

14 So, it was on our to-do list, but we have  
15 deemed other things more important, and I'm sure  
16 you would probably agree.

17 MR. ELIAS: And I do, and that's why I'm  
18 not here to say you ought to do it, the question is  
19 if you don't do it, where are we? Well, if you  
20 don't do it, where we are is that the Millionaires'  
21 Amendment, whether we like it or not, is for Senate  
22 campaigns is contained in 434(a). And there is a

1 regulation that talks about reporting violations  
2 under 434(a), and before, you know, before we wind  
3 up before a Federal Court arguing this all out, it  
4 struck me that this oral -- this opportunity in  
5 oral hearing is an opportunity to do what, frankly,  
6 I think one of the purposes of this process was,  
7 which is to allow there to be sort of a  
8 face-to-face, is this really where we want to go?

9 Is this really, with everything that faces  
10 the Commission, and the regulating community right  
11 now, is the Commission so certain of its position  
12 and need to vindicate this case that it -- that  
13 this is the case you want to bring to Federal  
14 District Court? You know, I understand that there  
15 may be larger reasons that the Commission does,  
16 though they are not apparent to me, and I guess  
17 since we were clear about this in our papers, but I  
18 wanted you to hear it directly, we feel pretty  
19 comfortable with going forward, and my client feels  
20 extraordinarily comfortable in going forward with  
21 that.

22 So, that's something that I wanted to

1 be [REDACTED]  
2 [REDACTED]  
3 [REDACTED] what is it, the  
4 last clear chance doctrine? I wanted to have my  
5 last clear chance at trying to make this argument  
6 before we wind up there, but I think that's where  
7 we're going.

8 COMMISSIONER WEINTRAUB: And we wanted to  
9 give you that chance, that's why you're here today,  
10 Mr. Elias, and I'm amused because one of your  
11 partners has been berating that we were doing too  
12 many ruling-makings and you're complaining that  
13 we're not doing enough.

14 MR. ELIAS: I'm happy with the rules the  
15 way they are. I was asked the question of, you  
16 know, what should we do about the fact that we  
17 think that these are more sensitive reports than  
18 there's statute pertinent to treat that, and that's  
19 my characterization, not yours, and my answer is  
20 well then do a rule-making if you think that that's  
21 a problem.

22 I'm happy to have 434(a) violations live

1 under the Administrative Fines procedure.

2 COMMISSIONER WEINTRAUB: I think that, you  
3 know, it seems to me, and I would suspect you  
4 wouldn't disagree with me, that the problem that  
5 you raise arises because the Administrative Fines  
6 program was created before the Millionaires'  
7 Amendment was even a twinkle in anyone's eye, and  
8 now, you know, and when that very complicated  
9 provision of the law was put into effect, you know,  
10 the connection between that and the Admin Fines  
11 program was not high on anybody's radar screen, but  
12 let me ask you this: Why -- when the Commission  
13 voted RTB, I mean, that by itself, you know, puts  
14 the case in the enforcement track rather than the  
15 Admin Fines track. Why doesn't that satisfy the  
16 requirement to make a determination?

17 MR. ELIAS: I believe that all  
18 determinations by agencies have to be reasoned, I  
19 don't mean that facetiously, I mean that genuinely,  
20 and I don't believe, though I suppose you would  
21 know, and we may all find out in court, whether or  
22 not there was, in fact, a reasoned determination to

1 move it from the Admin Fines track to the probable  
2 cause.

3 I suspect, and it's only a suspicion,  
4 that, in fact, in other cases, where the Commission  
5 has done that, there has been discussion of why  
6 we're going to do it or why we're not going to do  
7 it, and there are factors. There is a factual  
8 record for it.

9 In this instance, I never received any  
10 determination that there had been a vote to move it  
11 from one track to the other. I am unaware of there  
12 being a reasoned basis for the Commission's action  
13 to have moved it from one track to the other.

14 Why this case, for example, is more  
15 egregious, and more deserving of being in the -- in  
16 this track versus the Administrative Fines track,  
17 the oddity of this is that someone who completely  
18 fails to file a Form 3 at all, at all, just doesn't  
19 file it, says you know what, none of your business  
20 what my activity is, [REDACTED]  
21 winds up in the Administrative Fines track, than  
22 someone who files a Millionaires' Amendment report

1 six days late where there's no candidate affected.

2           It may be that in the -- that in the  
3 non-public deliberations of the Commission, there  
4 was a consideration of how it was that this case  
5 deserved to be in one track or the other, and I'll  
6 read with care the Commission's briefs before the  
7 court to explain what the reasoned basis was, but  
8 boy, there's nothing -- I keep waiting for them to  
9 show me what it was that Jim Pederson did, you  
10 know, maybe there are better lawyers, but Heckler  
11 v. Chaney seems to stand for the proposition that  
12 Corker files a late report and gets a  
13 please-don't-do-it-again notice. And, you know, he  
14 was running against someone. You know? He must --  
15 maybe he had the same -- they're all Republicans,  
16 so maybe Ravenel had the same lawyer, maybe I  
17 should go back and check and refer Pederson to him.

18           But Ravenel didn't do anything right.  
19 Think about this: 120 days, 105, that's 235, and  
20 then we tack on another 71, so now we're over 300  
21 days, so he had a collective 300 -- he had almost a  
22 year worth of late reports, in a competitive



1 primary. Plus, let's not forget, the false  
2 amendments, the unreported in-kinds, the unreported  
3 receipts, the unreported disbursements and the  
4 unreported capital gains.

5 I mean, heck, if there's a reasoned basis  
6 for how these cases have wound up, I'm going to be  
7 as interested as anyone to hear what it is.  
8 Because I don't believe the Commission actually sat  
9 back and made that determination. If it did, then,  
10 Commissioner, you may have an argument, but I  
11 suspect that it didn't, and if it did, I wasn't  
12 provided with it.

13 CHAIRMAN LENHARD: Vice Chairman Mason?

14 VICE CHAIRMAN MASON: When did you come to  
15 the conclusion that this case could only be pursued  
16 under the Administrative Fines track? Your  
17 response didn't mention that.

18 MR. ELIAS: Our response did mention that,  
19 that we thought that the appropriate finding in  
20 this case was 434 -- was an Administrative Fines  
21 amount under 434(a).

22 VICE CHAIRMAN MASON: I'm sorry, I looked

1 at your response this morning and I thought I read  
2 it as requesting a dismissal.

3 MR. ELIAS: We submitted to the  
4 Commission, to the General Counsel's Office, a  
5 letter which is the one that I referenced, that was  
6 not -- [REDACTED]

7 [REDACTED]  
8 VICE CHAIRMAN MASON: That's why I asked  
9 when, because when you responded a year ago, you  
10 asked for a dismissal, [REDACTED]

11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]

14 MR. ELIAS: So, you're saying in our  
15 original response to the complaint, we sought a  
16 dismissal?

17 VICE CHAIRMAN MASON: And I'm trying to  
18 determine when you decided that this could only be  
19 pursued under the AF schedule.

20 MR. ELIAS: Well, remember, there's a  
21 difference between -- I'm arguing two positions  
22 here today. One is that it ought --

1 VICE CHAIRMAN MASON: What is that?

2 MR. ELIAS: One is that it ought to be  
3 dismissed. One is that it ought to be dismissed.

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VICE CHAIRMAN MASON:

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MR. ELIAS: Correct.

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VICE CHAIRMAN MASON: I'm trying to  
16 determine when you came to this conclusion. Let me  
17 just make this suggestion: You have a very  
18 interesting legal argument, which I think is wrong,  
19 and if the -- if that's the question, maybe a judge  
20 does need to decide that. I think it's wrong in  
21 the first instance, because when you described why  
22 these had to be in the AF program, you conveniently

1 skipped the first sentence, which refers the  
2 Commission to determining whether it goes under  
3 subpart (b) and you jumped to the second sentence.  
4 I will concede that that paragraph is not a model  
5 of clarity, and so if we want to go fight that  
6 legal issue, great. And if you think that legal  
7 issue is enough to give your client the leverage to  
8 oppose this and maybe money and the money is worth  
9 the fight, great.

10 I don't think that's the real issue here.  
11 I think you have a pretty powerful argument in  
12 terms of the equities and comparing it to other  
13 cases and comparing it to the particular  
14 circumstances, but I'm just trying to unwind those  
15 a little bit. And just as you're suggesting to the  
16 Commission that we shouldn't, you know, we should  
17 think carefully about what our objective is here,  
18 I'm trying to determine, you know, whether you are  
19 so enamored of this interesting legal argument,  
20 that you didn't make for a long time, that you  
21 think that's really where we're at. [REDACTED]

22 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

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MR. ELIAS: And let he be clear,

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Commissioner, yes, there is. I don't want to leave

6

you with the impression that I am here like, you

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know, Gideon v. Wainwright, here to vindicate a

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clear proposition of law. [REDACTED]

9

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11

12

I completely agree with you, and that's

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part of why I'm here today. Because I don't

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necessarily think I'm going to leave with you all

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believing that I -- that my interpretation of the

16

law is right and your interpretation of the law is

17

wrong.

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[REDACTED] You know, obviously if we wind

1 up in court, then we wind up making a series of  
2 arguments, both on the equities, and on the law.

3           Though I have been clear with the staff,  
4 you know, this is why I have an -- I have not  
5 wanted to waste the Commission's time or the  
6 staff's time. [REDACTED]

7 [REDACTED]  
8 [REDACTED] And if it can't, then you're  
9 right, it will be an interesting legal argument.

10           I did not mean, by the way, to selectively  
11 quote, I thought I began and the transcript will  
12 reflect whether I did or didn't by reading both,  
13 although if I didn't, I apologize. It is not a  
14 model of clarity as a perdition. I do think it  
15 requires a determination one way or the other.

16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]

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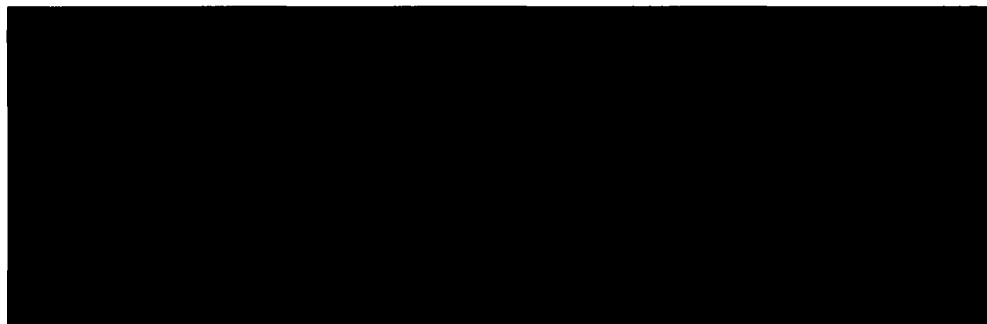
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I mean, it just may be that we are all on the outside just not seeing things that you all see. I know you have schedules and precedent and everything. I just don't see it. I mean, last night I went poking around and I, you know, I mentioned again, you know, Mr. Ravenel. I mean, I just don't see what's motivating this case to be at the kind of dollar levels that this case seems to be at.

VICE CHAIRMAN MASON: I ask, this provision is under 434(a)(6). The AF for 434(a)(6)

[REDACTED]

[REDACTED]

MR. ELIAS: Is that the Election Sensitive report?

VICE CHAIRMAN MASON: No.

MR. ELIAS: Yeah, it is, 48-hour notice.

1 [REDACTED]  
2 [REDACTED] This was not a 48-hour notice.

3 VICE CHAIRMAN MASON: It's a subsection of  
4 434(a)(6).

5 MR. ELIAS: Now, Commissioner, with all  
6 due respect, I'm reading your regulation. I'm not  
7 characterizing it, "What is the schedule of  
8 penalties for 48-hour notices that are not filed or  
9 filed late," okay? This was not by its plain terms  
10 a 48-hour notice.

11 VICE CHAIRMAN MASON: Two problems with  
12 that: One is that all of the other provisions  
13 refer to reports by committees, and this report is  
14 of course by an individual; and the other is that  
15 that regulation existed on [REDACTED] as Commissioner  
16 Weintraub points out, before this new subsection  
17 was added 434(a)(6).

18 So, as I see it, we're looking by analogy,  
19 if you force this into the AF context, we're either  
20 using a schedule that's intended for committees, or  
21 somebody that's not a committee, and that's the  
22 explicit language of the reg, or we're using a



1 schedule that refers to 48-hour notices, because at  
2 the time the reg was written, 434(a)(6) concerned  
3 only 48-hour notices.

4 Congress chose to put the Millionaires'  
5 reporting for Senate candidates in 434(a)(6),  
6 presumably they did that with knowledge of the  
7 regulations.

8 MR. ELIAS: And they chose not to make it  
9 a 48-hour report, presumably with knowledge of the  
10 regulations.

11 VICE CHAIRMAN MASON: But my point is that  
12 we're -- we would therefore be choosing one  
13 schedule or another that simply does not fit by the  
14 explicit terms. I think the argument against the  
15 other schedules is just as strong as the argument  
16 you're making.

17 MR. ELIAS: I think if you go to your  
18 website, it says, "Is this a 48-hour notice?" And  
19 if you check no, then you wind up with the  
20 calculation that I prepared. It's not my website.

21 CHAIRMAN LENHARD: But I guess the, you  
22 know, to answer your question of in talking to

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1 people at your firm about what is going on here,  
2 this is at its core a \$2 million reporting  
3 violation, and under one rule, it's either under  
4 the Administrative Fines program as a \$2 million  
5 violation or an individual contribution of \$1,000  
6 or more will generate a penalty under the  
7 Administrative Fines program [REDACTED]

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Now, you've got an argument, I think it's a reasonable one, that in a Millionaires' Amendment, you know, schedule, is inappropriate, you know, in the context where there is not an opponent, because it does not trigger an increase in the contribution limits, although I'm not sure it's entirely fair to say that there is no prejudice by the not filing, because there is some public disclosure element to the fact that a candidate has injected multiple millions of dollars into their campaign.

And we are very aware, we thought about this in our advisory opinions, a little, I guess it was the end of last year, beginning of this year, in how to interpret whether there was an opponent in a race when the primary candidate was, in fact, running against a general and presumed general election opponent, and I assumed that in this case

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1 the reason why your client injected \$2 million into  
2 their primary campaign with no opponent was because  
3 that money was ultimately used with an eye towards  
4 who they would be facing in the general election.

5 Now, again, you made a good point in that  
6 it does not trigger under our interpretation of the  
7 Millionaires' Amendment an increase in the ability  
8 of his general election opponent to raise more  
9 money, but I'm not sure that there is another  
10 element of interest at play I think in these  
11 reports.

12 MR. ELIAS: A couple of responses to that:  
13 Number one, you put \$275,000 in his committee on  
14 6/30/06. We filed the report three days late and  
15 it was filed on July 4th. I don't believe, and  
16 just so that I'm not accused of selectiveness here,  
17 the other one was March 31st, '06, and six days  
18 late was filed on April 7th.

19 I am not sure I understand what the public  
20 harm was. I may just be dense. I don't understand  
21 the view as not, in fact, if you're going under a  
22 public harm analysis, then the amount of the

1 dollars is relevant. It's relevant.

2 The fact is that Mr. Ravenel, for 300  
3 days, collectively, the public didn't know. They  
4 didn't know. For 300 days they didn't know.

5 CHAIRMAN LENHARD: What was the amount in  
6 dispute in that? I forgot.

7 MR. ELIAS: \$50,000, followed by \$45,000,  
8 followed by \$40,000, followed by \$16,000. You  
9 mentioned Broyhill: \$375,000, followed by \$25,000,  
10 followed by \$150,000, followed by \$50,000, followed  
11 by \$50,000, followed by \$50,000, followed by  
12 failure to report a \$90,000 loan, and even through  
13 all of that he didn't report a \$1,500 personal  
14 contribution at any point.

15 So, if we're talking about personal -- if  
16 we're talking public harm here, I actually will --  
17 I'm not sure why you drive off of dollars. Which  
18 harms the public -- which harmed the public more?  
19 That they didn't know for six days that Jim  
20 Pederson had put \$2 million in his campaign, or  
21 that they didn't know for collective 300 days at a  
22 time where it was a competitive Republican primary,

1 where Ravenel was running day-in, day-out, against  
2 other Republicans, who didn't know, and the public  
3 didn't know. That he had put \$50 and \$45 and \$50  
4 and \$16 [thousand] into his campaign and that he  
5 had unreported in-kind contributions and unreported  
6 receipts and unreported disbursements.

7 And if that's the standard, why did  
8 Mr. Corker, Mr. Corker reported a day late, I  
9 understand the answer, yes, but he faxed it to his  
10 opponents, but he was only late to the Commission.  
11 Well, guess what? We didn't have any opponents to  
12 fax it to.

13 That's no public harm there? Whether it's  
14 a day, six days, a day, six days, three days,  
15 what's the dividing line? A day and a half, two  
16 days?

17 CHAIRMAN LENHARD: Commissioner Walther?

18 COMMISSIONER WALTHER: I'm sitting here  
19 listening to the counsel's comments and some of  
20 yours as well, but I just wanted to run a scenario  
21 by you. Would it be your position, then, that if  
22 there's no opponent, simply there is no fine

1 involved, ever?

2 MR. ELIAS: No, that wouldn't be my  
3 position.

4 COMMISSIONER WALTHER: How would you go  
5 about it, then, if there is no opponent in the  
6 primary, how would we go about it, in your opinion?

7 MR. ELIAS: First of all, I think this  
8 harkens back --

9 COMMISSIONER WALTHER: Are we going to  
10 have to sit here as a commission to speculate as to  
11 what damage was done to the public?

12 MR. ELIAS: 

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20 I'm not here today to try to strike down,  
21 you know, the Commission's handling of all  
22 Millionaires' Amendment cases or all Millionaires'

1 Amendment cases for Senate candidates. [REDACTED]

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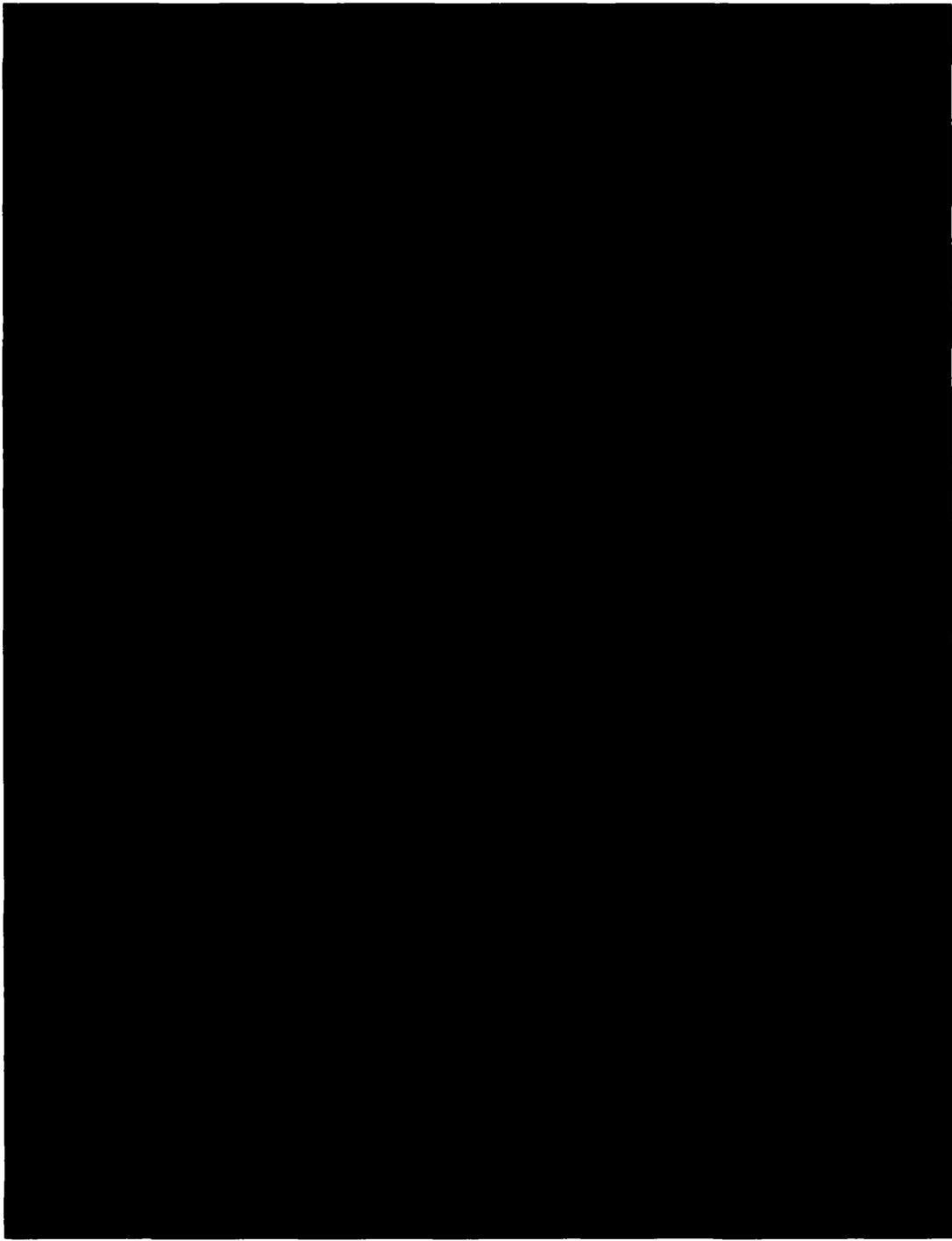
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COMMISSIONER WALTHER: I would like to

continue just a little bit. In this particular

case, your position is that there is no opponent,

and therefore there is no damage, except that if,

you know, the speculating public general disclosure

issue, but to me, the Millionaires' Amendment of

merely any reporting obligation into one that can

cause prejudice the most is somewhat -- and because

of the timing issue and the money involved and

everything else.

So, what about the candidate who the

person is sitting there and everyone is urging him

to run for office, and the guy says, I just don't

think I can do this, I just don't think I can get

the money in time and whatever reasons there exist,

and so there's this reticence there. And the

person never does -- never does make that decision,

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1 but if the person had known that he was running  
2 against somebody and he could call and all of the  
3 sudden his limits would be raised, there might be a  
4 different geometry here, a new thinking in a  
5 candidate.

6 So, isn't it also notice to somebody else  
7 out there who might be thinking of running as to  
8 how they might be able to, you know, run a  
9 campaign, whether successfully or not? And I mean,  
10 are we to imagine as a Commission as to whether or  
11 not there's a factor out there like that?

12 And I mean, what about the person who is  
13 already a millionaire, do you say, well, in a  
14 primary, and is there no notice then because, after  
15 all, the person is already running against another  
16 millionaire, so it doesn't make a difference?

17 I guess the point I'm trying to make is  
18 that at some point I don't think the argument is  
19 persuasive to me just because there's no opponent  
20 that we should basically eviscerate the rule.

21 MR. ELIAS: Well, okay, number one.

22 COMMISSIONER WALTHER: I'm sorry, I don't

1 want to bring up the discussion of Senator Biden.

2 MR. ELIAS: I won't tell the Senator.

3 A few things: Number one, I'm not trying

4 to eviscerate the rule. I continue to do

5 something, which is probably unusual, [REDACTED]:

6 [REDACTED]

7 [REDACTED] So,

8 I'm not here to try to eviscerate the rule or

9 strike down the rule or, you know, if we wind up in

10 court, we will have a great discussion about

11 whether or not the Commission acted contrary to law

12 and I want to be clear about that, but my purpose

13 here today is to try to see whether or not this

14 case is likely to give you my perspective, [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 I don't have it in front of me, and

18 therefore I want to make this representation only

19 with a strong caveat, and I'm happy if the

20 Commission wants me to follow up, I will. I

21 believe the filing date had closed. So, I don't

22 believe that anyone else could have gotten into the

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1 race. It had not closed? Okay.

2 MS. HEILIZER: No.

3 MR. ELIAS: Do you know when it closed?

4 MS. HEILIZER: It was June 14th, I  
5 believe, and Mr. John Verkamp had been considering  
6 running.

7 MR. ELIAS: Yes, Mr. John Verkamp, yes,  
8 exactly. So, for the second one it had closed, but  
9 not for the first one? Okay.

10 MS. HEILIZER: Correct.

11 MR. ELIAS: The fact is that if you had  
12 facts to suggest that the millionaire had done  
13 that, had said let me do this, to gain this system,  
14 then you're right, you have a different case [REDACTED]

15 [REDACTED]  
16 Here, we submitted an affidavit from an  
17 experienced compliance director, someone who had  
18 done FEC compliance before, who said it was their  
19 fault. Okay? So, you don't have the facts that  
20 you posited. [REDACTED] [REDACTED]

21 [REDACTED]  
22 [REDACTED]

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You

13 know? I think it's accepted by all that this was  
14 an honest mistake made by a first-time candidate  
15 about a new statute relying on experienced staff  
16 who made a mistake and there we have it.

17 CHAIRMAN LENHARD: Commissioner Weintraub?

18 COMMISSIONER WEINTRAUB: As to why it's so  
19 important the amount in violation, I'm not  
20 violating any confidences in saying because it's in  
21 the statute that we're supposed to consider the  
22 amount in violation in setting penalties.

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1           Now, you know that if I had my way, you  
2   would have our entire penalty schedule. In fact,  
3   you wouldn't -- not just you, but you and everybody  
4   in the regulating community would have our entire  
5   penalty schedule to look at and then I could ask  
6   you, as I would like to ask you, if you can come up  
7   with another proposal that would be justifiable,  
8   assuming that we didn't buy your Admin Fines  
9   calculation, is there some other way to get to a  
10  number that might be a grounds for settlement?

11           And it's very frustrating to me that I  
12  can't really ask you that question, because you  
13  don't know how we calculate the penalties and a  
14  variety of other circumstances.

15           But, you know, the -- why we consider  
16  that, that one factor is one that's in the statute,  
17  the amount in violation. And unfortunately in  
18  Millionaires' Amendment cases by definition is  
19  always going to be [REDACTED]. So, we are to  
20  some degree stuck with that.

21           But I want to go back to something that  
22  was raised by the Vice Chairman and I want to be

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1 clear about this. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4

MR. ELIAS: He --

5

COMMISSIONER WEINTRAUB: [REDACTED]

6 [REDACTED]

7 [REDACTED]

8

MR. ELIAS: [REDACTED] [REDACTED] [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15

COMMISSIONER WEINTRAUB: [REDACTED]

16 [REDACTED]

17 [REDACTED]

18

MR. ELIAS: Correct.

19

COMMISSIONER WEINTRAUB: [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

1 MR. ELIAS: I think that's fair.

2 CHAIRMAN LENHARD: Vice Chairman Mason?

3 VICE CHAIRMAN MASON: When was the Ravenel  
4 race?

5 MR. ELIAS: I believe Ravenel beat -- I'm  
6 sorry, lost to -- this is in the back of my mind,  
7 it was either Jim DeMint or was it -- it was DeMint  
8 or it was Lindsey Graham. I think it was DeMint.

9 VICE CHAIRMAN MASON: Do you know what  
10 cycle it was?

11 COMMISSIONER WEINTRAUB: 2004.

12 VICE CHAIRMAN MASON: 2004, okay.

13 CHAIRMAN LENHARD: Commissioner Walther?

14 COMMISSIONER WALTHER: Chairman, I am  
15 interested in the comments of General Counsel on  
16 some of these issues, if we could engage them.

17 CHAIRMAN LENHARD: Having not sought  
18 recognition, but having it thrust upon you.

19 MR. DUNCAN: That's okay. I'm happy to  
20 oblige. I had not sought recognition, frankly,  
21 because commissioners were asking all of the  
22 questions that I had contemplated asking, and I



1 think that you've given answers that while we don't  
2 agree with them, I didn't predict that they would  
3 be different.

4           The only area that perhaps I would like to  
5 explore a bit more is the area of if the Commission  
6 were to accept your legal arguments, and again, we  
7 differ in that regard for some of the very reasons  
8 that the vice chairman has indicated, but if the  
9 Commission were to look to the Administrative Fines  
10 schedule as guidance in this matter, I'm challenged  
11 to understand why you believe that a routine  
12 non-election sensitive report would be more  
13 analogous here to a Form 10 than, for example,  
14 48-hour notice.

15           I mean, there are just some obvious  
16 differences that I'm not sure, frankly, that you've  
17 accounted for.

18           MR. ELIAS: Sure. Here's my answer: And  
19 it is -- it will reveal two prejudices, one of  
20 which is I am shocked, generally, at the difference  
21 between the treatment of 48-hour reports from Form  
22 3s. I mean, the fact is, under this schedule --

1 under this current schedule, people could simply  
2 not file a Form 3. I mean, it's extraordinary.

3 I mean, the thought that somehow the  
4 failure to file an FEC report at all is not more  
5 significant relative to the filing of these other  
6 reports. I realize that doesn't necessarily speak  
7 to your -- to this case directly, because that kind  
8 of is what it is, but that kind of is a prejudice  
9 that belies what I'm about to -- or it serves as a  
10 foundation to what I'm about to answer your  
11 question, which is that presumably, 48-hour reports  
12 are unique, in the sense that they -- once they  
13 come and go, they're gone. They're fleeting.

14 In other words, if you don't report the  
15 fact that someone has donated to your campaign in  
16 the final closing days of the campaign, by the time  
17 the election -- once the election is over, there is  
18 no meaningful way to recapture that. Because, you  
19 know, if you're a Democrat running for Senate in  
20 Minnesota, who has pledged not to take  
21 pharmaceutical money, and then on the eve of the  
22 election, you take -- or more than 48 hours from

1 the election, not the eve, you take a bunch of  
2 pharmaceutical money, the fact that that doesn't  
3 get disclosed until after -- if it doesn't get  
4 disclosed then, then essentially the harm is done  
5 and there is no corrective action that can be taken  
6 after the election.

7 That isn't the case -- I'm not sure that  
8 that is generally case in the Millionaires'  
9 Amendment context, but it is certainly not the case  
10 here, because, of course -- and this is why I use  
11 the dates, I'm not -- it is not true that  
12 Mr. Corman [phonetic], or even Verhoffer  
13 [phonetic], or whatever the guy you said.

14 MR. DUNCAN: Verkamp.

15 MR. ELIAS: Yeah, all right, so Verkamp.  
16 Verkamp didn't learn on -- you know, he was on the  
17 bubble, he was ready to pull the trigger, and he  
18 was sort of touch and go, and then he didn't learn  
19 on the 31st, or I'm sorry, on the 1st of April that  
20 Jim Pederson had put in \$2 million, he learned on  
21 the 7th of April.

22 There was nothing fleeting about that,

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1 whether he learned on the 1st or he learned on the  
2 7th, he could still decide that he was going to get  
3 in the race, that he was not going to get in the  
4 race, and unless, you know, now you may tell me  
5 that something befell Mr. Verkamp in the midst of  
6 that period, but just it's a less fleeting thing  
7 than a 48-hour report is.

8 MR. DUNCAN: Well, I don't think the  
9 purpose of the hearing is for -- is for me to  
10 respond, actually, but --

11 CHAIRMAN LENHARD: You looked like you  
12 were poised.

13 MR. DUNCAN: But I did want to at  
14 Commissioner Walther's request just follow up to  
15 say that I am not entirely sure that it's in the  
16 Commission's best interest to try to determine, for  
17 example, whether this late filing had a particular  
18 impact on Mr. Verkamp or not.

19 MR. ELIAS: Is it B or F?

20 MR. DUNCAN: V E R K A M P. And just to  
21 emphasize that the Democratic primary deadline,  
22 filing deadline, did end on June 15th, more than

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1 two months after the untimely filed Form 10. And  
2 so therefore it would seem at least possible that  
3 some potential opponent who might have wished to  
4 have taken advantage of the increased contribution  
5 limits might have wanted to know about that filing  
6 sooner rather than later.

7 MR. ELIAS: By the way, I agree with you.  
8 Let me just start with this: If we can agree on  
9 one thing, it is that I -- that I don't see how the  
10 Commission is going to get into the minds of people  
11 who might have run, but didn't run, who, frankly, I  
12 never heard of. I mean, I don't doubt you that  
13 there is some guy named Verkamp who was out there  
14 and thinking of running. But I agree, that can't  
15 be where the Commission winds up, but if it were,  
16 it would be a curious state of affairs, just as an  
17 observation, that someone was going to run, I'm  
18 sorry, was not going to run, and then when they  
19 found out they were facing \$2 million, then they  
20 were going to run. You know? That if only they  
21 had known they were facing a self-funder earlier,  
22 they would have run.

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1 I mean, if anything, it would be the other  
2 way around. You know, you could see the aggrieved  
3 party being the person who got in the race only to  
4 find out that there was someone who had put money  
5 in.

6 CHAIRMAN LENHARD: But the point I think  
7 she's make is there a public interest or an  
8 institutional interest in having that information  
9 provided in a timely fashion.

10 MR. ELIAS: There is a public interest.

11 CHAIRMAN LENHARD: And the point she's  
12 making is that people are making a decision, and  
13 now in that particular case it may not have changed  
14 the outcome.

15 MR. ELIAS: There is a public interest.  
16 There is a public interest in knowing the public  
17 interest in campaigns, Form 3s serve an enormous  
18 public interest. All of these reports serve a  
19 public interest. Of course there is a public  
20 interest, what I'm trying to do is weigh the public  
21 interest of a report filed three days late and six  
22 days late here, with reports filed 50 days -- I'm

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1    sorry, 120 days, 105 days, 71 days late by Ravenel,  
2    and, you know, a serial offender by Broyhill and  
3    the one day late by Corker. I mean, in each of  
4    those cases, there is some public interest, but in  
5    the case of Mr. Corker, you chose to waive a public  
6    interest as worthy of dismissal as prosecutorial  
7    discretion.

8               In the case of Mr. Ravenel, you chose to  
9    waive the public interest at \$19,500, and I'll tell  
10   you right now, you know, I'll submit this to an  
11   arbitrator, you choose one, I choose one, we get  
12   them to choose the third, of political  
13   professionals, as to whether or not Mr. DeMint was  
14   more prejudiced than Mr. Verkamp, okay? Mr. DeMint  
15   was running for his life. He was a Congressman  
16   running for Senate against a well-funded primary  
17   opponent. Where was -- who suffered greater  
18   prejudice? Come on.

19              Of course Ravenel was greater prejudiced  
20   to the system. To his opponents. To the public.  
21   That was a hotly contested primary. Between three  
22   candidates. One of which was a self-funder, one of

1 which was an ideological conservative and one of  
2 which was a city member, I'll let you figure out  
3 which was which.

4 So, that was a hotly contested primary.

5 So, I'm all for saying there is a public interest,  
6 I don't understand -- and it may be Commissioner  
7 Weintraub, I don't see the formula that you all  
8 use, where you plug this all into a computer and it  
9 spits it out. But I don't see how Mr. Ravenel  
10 inflicted less damage to the public interest in  
11 that recidivism than our collective nine days here.

12 CHAIRMAN LENHARD: [REDACTED]: [REDACTED]

13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]



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8 MR. ELIAS: But number of days missing  
9 isn't a complex variable. I mean, I'm not saying  
10 to get Charlie Cook in here. [REDACTED] [REDACTED]

11

12 [REDACTED] then I've got to  
13 tell you this agency has probably got a larger  
14 problem than the Federal Court down the road than  
15 my case presents.

16 I mean, it can't be the case that the  
17 number of days late doesn't mean something in the  
18 Millionaires' Amendment context. It can't be the  
19 case that that is -- not only means something, but  
20 means a lot. It can't be the case that whether or  
21 not there is another opponent in the race means  
22 something or not. I mean, those have to be not

1 just variables, but I would think in this [REDACTED]  
2 [REDACTED] I would be shocked that  
3 they're not dominant variables.

4 If you tell me the dominant variable is  
5 the amount of the violation, then this may actually  
6 be irreconcilable. Then this may be  
7 irreconcilable, because it doesn't accord with, I  
8 think, the common sense approach people will have  
9 about where harm has been suffered, whether the  
10 harm is suffered by actual opponents, potential  
11 opponents or just the public at large.

12 Mr. Corker got off on a one-day late  
13 thing, God bless him, I think you were right to  
14 exercise prosecutorial discretion, because it was a  
15 day late. And it was a day late to the Commission.  
16 Nobody cared. It doesn't affect anything.

17 By the way, he was in a hotly contested  
18 primary, too, I might add. Or it was during the --  
19 he had a contested primary and he was in a  
20 contested general election, so I don't remember  
21 whether it was primary or general, but it took  
22 place during a much more actively -- a much more

1 active campaign than this primary was.

2 I would argue that from, you know, what I  
3 would argue you do is Heckler v. Chaney,  
4 prosecutorial discretion, dismiss it and not have  
5 to deal with all of these thorny questions. You  
6 all may find that to be an unsatisfactory result,  
7 but I think it's -- [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 CHAIRMAN LENHARD: Okay. Other thoughts?  
12 Comments?

13 (No response.)

14 CHAIRMAN LENHARD: I see you have used  
15 your 20 minutes. And then some. I don't mean to  
16 cut anybody off. Apparently you've reserved time  
17 for a closing statement.

18 MR. ELIAS: I did, but I also -- I was  
19 going to say I'm going to quit while I'm ahead, I'm  
20 not sure I'm ahead, but I'm not sure continuing to  
21 talk is going to get me any further than where I am  
22 now. So, I just want to thank all of you for your

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1 time and say just a kind word, first of all, for  
2 the staff's treatment of this case. I want to be  
3 clear, there has never been anything in my dealings  
4 with them or any of you that have been anything  
5 other than courteous and appropriate. And to  
6 commend the Commission for having adopted this  
7 process to begin with. I think this is a good  
8 addition, whether it resolves this case or not, you  
9 know, it's hard for you guys to see what it means  
10 to the private sector, but it means a lot to people  
11 who are respondents to know that their lawyers get  
12 a chance to address the actual Commission. And  
13 whether it winds up meaning that this case settles  
14 or not, I do think that it will have a beneficial  
15 impact on resolving cases in the future. So, I  
16 just want to thank you for your time.

17 CHAIRMAN LENHARD: Certainly. We  
18 appreciate the time you guys have put in front of  
19 us, you are paid to represent your clients, but I  
20 think it does provide us with a chance to have some  
21 frank exchange that by the rules the agency would  
22 otherwise not permit.

1 MR. ELIAS: I won't comment on the wisdom  
2 of those rules.

3 CHAIRMAN LENHARD: Well, it's enforced by  
4 the statutory right just would be my guess, so it  
5 doesn't just fall completely under the ex parte  
6 problems, but we do appreciate your time and I  
7 think it is helpful that this does obviously  
8 present us with a question of how we perceive these  
9 kinds of questions and as to whether or not we  
10 complete a one-time fix and so obviously it makes  
11 the problem harder for us to solve. We appreciate  
12 your time, thank you, and with that, we bring this  
13 matter to a close.

14 (Whereupon, at 11:05 a.m., the hearing was  
15 concluded.)

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REPORTER'S CERTIFICATE

DOCKET NO.: N/A  
CASE TITLE: MUR 5785 - James Pederson - Pederson 2006  
HEARING DATE: October 9, 2007  
LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are  
contained fully and accurately on the tapes and notes  
reported by me at the hearing in the above case before the

Date: 10/9/07

  
Sally Jo Bowling

Official Reporter

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